IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 157 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAMESH MAKWANA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 157 of 1992

MR NAGIN N GANDHI for Petitioner No. 1

MR AJ DESAI, PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 23/08/2001

ORAL JUDGEMENT

#. This revision is preferred against the order passed by the learned Additional Sessions Judge, Bhavnagar on 14.5.1992 directing to quash the order dated 8.7.1991 of Judicial Magistrate First Class by which order the Magistrate directed the police to separate the charge

sheet of the present petitioner from other accused and produce the said charge sheet before the Juvenile Court. The learned Sessions Judge, while setting aside the order of the Magistrate came to the conclusion that the present petitioner was not juvenile and be tried by the regular Court.

#. The facts of the case goes to show that the present petitioner was charged with an offence punishable under Sections 302, 114 of the I.P.C. and 135 of the Bombay Police Act registered as Crime Register No.I-290/1990 before Bhavnagar "A" Division Police Station. As per the First Information Report filed, the incident took place on 16.9.1990 at about 7:45 p.m. at Bhavnagar and in pursuance of this registration of crime the present petitioner was arrested by the police on 18.9.1990. On the same day the petitioner was produced before the learned Judicial Magistrate First Class, 3rd Court at Bhavnagar with a report stating that the petitioner was 16 years of the age. The learned Judicial Magistrate directed the police to present petitioner before the Magistrate of the Juvenile Court. Police thereupon presented the present petitioner before the Juvenile Court which directed the police to produce the petitioner before the Juvenile Court only on satisfying that the petitioner was juvenile. The Court of learned Judicial Magistrate thereafter held the enquiry to ascertain the age of the petitioner, meanwhile the present petitioner also filed an application on 25.10.1990 to forward him before Juvenile Court because he was under 16 years of age. Pending this inquiry the police submitted charge sheet against all the 3 accused including the present petitioner on 26.11.1990 before the Chief Judicial Magistrate and the case was registered as Criminal Case No.4343/1990. On submitting this charge sheet the then Judicial Magistrate First Class, 2nd Court, Bhavnagar by his order dated 8.7.1991 directed to separate the charge sheet against the petitioner and to submit before the Juvenile Court holding that the petitioner's age was between 16 to 17 years. It appears that in the said enquiry two witnesses were examined i.e. one Dr.Dhirajlal Adheda to whom the petitioner was sent for ossification test and the second witness was Valimohammad Umarbhai - Principal of Daulat Anant Valiya New High School who produced School Leaving Certificate in respect of the petitioner. However, by the said order dated 8.7.1991 the learned Judicial Magistrate First Class, 2nd Court came to the conclusion that the petitioner was below 16 years of age and ordered to separate the charge sheet of the petitioner. The said order of the learned Judicial Magistrate dated 8.7.1991 was examined by the

learned Sessions Judge, Bhavnagar in suo Motu revision. After hearing Public Prosecutor and advocate for the defence, the learned Sessions Judge, Bhavnagar vide his order dated 5.9.1991 came to the conclusion that the order passed by the learned Judicial Magistrate First Class, 2nd Court, Bhavnagar on 8.7.1991 to separate the charge sheet of the petitioner was not correct and the same was quashed. It was further ordered that if the charge sheet is submitted before the Juvenile Court by the police, the same should be returned to the police and if the charge sheet is not submitted to the Juvenile Court then the petitioner be committed to the Court of Sessions for the trial according to law.

#. Being aggrieved by this order of learned Sessions Judge, Bhavnagar, the present petitioner preferred Revision Application before this Court being Criminal Revision Application No.1166/1991. This Court vide order dated 11.3.1992 remanded the matter to the Sessions Judge, Bhavnagar with a direction to record the further evidence and to arrive at the finding regarding the age of the petitioner because this Court found the evidence recorded in inquiry was not sufficient to come to conclusion. It was further ordered that both the parties be given sufficient opportunity to adduce evidence.

#. Thereafter, learned Additional Sessions Judge, Bhavnagar recorded further evidence in the matter. In further evidence Makwana Dhanjibhai Bhavanbhai father of the present petitioner and Rameshbhai Dhanjibhai Makwana, present petitioner were examined as a witnesses. Witness Valimohammad Umarbhai who was examined before the learned Judicial Magistrate First Class was recalled and was further examined as a witness. In documentary evidence at Ex.13 a xerox copy of the School Leaving Certificate of Primary School of Mahanagar Palika Bhavnagar in respect of the petitioner is produced. Vide Ex.14 xerox copy of the School Leaving Certificate of Daulat Anant Valiya New High School is produced. Vide Ex.15 xerox copy of the School Leaving Certificate of Daulat Anant Valiya New High School, in respect of the Makwana Suresh Dhanjibhai i.e. the brother of the present petitioner is produced. After hearing the parties learned Sessions Judge, vide his order dated 14.5.1992 came to the conclusion that the order of learned Judicial Magistrate First Class passed on 8.7.1991 to separate the charge sheet of the petitioner considering him below 16 years of age was erroneous and learned Sessions Judge quashed the above said order. It was further directed that if the charge sheet against the petitioner is submitted before the Juvenile Court the same shall be returned to the

police for submitting the same in proper Court. It was also further ordered that if that is not done, since original charge sheet dated 26.11.1990 is filed against the accused the same be treated as pending and the petitioner be committed for trial according to law.

#. Being aggrieved and dissatisfied with the above said order of learned Additional Sessions Judge, Bhavnagar which is of 14.5.1992, this Revision is filed by the petitioner original accused of Criminal Case No.4343/1990.

#. Learned advocate Mr.N.N.Gandhi, for the petitioner and learned APP Mr.A.J. Desai, for the State were heard. Learned advocate for the petitioner Mr.Gandhi has urged that the order impugned is erroneous on two grounds, that the learned Additional Sessions Judge has ignored the result of the ossification test and according to the Dr.Dhirajlal Girdharlal Adheda was examined before the learned Magistrate on 22.11.1990, the age of the petitioner on the date of examination could be between 16 to 17 years according to medical evidence. Though Dr.Dhirajlal Girdharlal Adheda said that in his opinion there might be an error of margin of time of six months either way. Learned advocate Mr.Gandhi placed reliance on the decision of the Hon'ble Supreme Court in the matter of Jaya Mala Vs. Home Secretary, Government of Jammu & Kashmir reported in AIR 1982 Supreme Court 1297 wherein vide para-9 it was held that the margin of error in age ascertained by radiological examination may be 2 years on either side. Learned advocate Mr.Gandhi relying on this observation submitted that at the time of commission of offence the age of the petitioner may also be between 14 to 16 years. Learned advocate urges that this aspect of the matter is ignored by the learned Sessions Judge and, therefore, the order is vitiated. It was further urged that the School Leaving Certificates produced before the Court of Sessions Judge vide Ex.13, 14 and 15 are of no avail because the same are contradicting. It was further urged that the Headmaster of the School Valimohammad Umar was examined before the learned Judicial Magistrate and was further examined by the learned Sessions Judge after remand of the first revision and he has no personal knowledge about the entries made in the register and, therefore, no reliance can be placed on these School Leaving Certificates. It was also urged that witness Valimohammad Umarbhai has admitted in his cross-examination before the learned Magistrate that at Entry No.805 there was one more student named as Makwana Ramesh Dhanjibhai whose date of birth was recorded as 13.7.1974 while as urged by

Mr.Gandhi, according to the case of the prosecution the date of birth of the petitioner is recorded at Serial No.7547 and date of birth is 1.2.1970. It is urged that the petitioner's case is that he never studied in the school and only he got some learning through one Shantaben who was his neighbour except that he was never admitted to any of the school for studying purpose. Therefore, it was vehemently urged that the School Leaving Certificates produced on the record cannot be relied on because the same do not pertain to present petitioner. It is urged that the Revision be allowed and the order of learned Sessions Judge, Bhavnagar, which is impugned be quashed and according to the order of learned Judicial Magistrate First Class the charge sheet against the present petitioner be returned to the police for submitting the same to the Juvenile Court.

#. On the other hand, learned APP Mr.Desai has urged that the School Leaving Certificates are public documents and can be proved by producing certified copies of the same. This is the extract of the register maintained by the school authorities. The question of having personal knowledge of the witness would not arise at all. Public documents according to Mr.Desai can be proved by merely producing a certified copy and accordingly the date of birth of the petitioner which is 1.2.1970 is proved. There is no other evidence to disprove this fact on behalf of the petitioner. It was further urged that according to the observation made by the Apex Court in the above mentioned Jaya Mala case (Supra) the age of the petitioner could be also between 16 to 18 years at the time of commission of the offence. It is urged that the petitioner cannot be benefited by the above observation of the Apex Court in the above said decision. Because the Hon'ble Supreme Court has said that margin of error of ossification test may be 2 years on either side. It was therefore urged that the Revision be dismissed and the interim relief granted be vacated.

#. Having considered rival contentions, it surfaces that the short question which requires determination is whether the petitioner was juvenile within the meaning of Section 2(h) of the Juvenile Justice Act, 1986 on the date of commission of the offence which is 16.9.1990. The learned Judicial Magistrate, 2nd Court held an enquiry to ascertain the age of the petitioner and came to the conclusion that the petitioner was below 16 years of age. In suo motu Revision learned Sessions Judge quashed the order of learned Judicial Magistrate First Class and ordered to commit the petitioner to the Court of Sessions for trial. On preferring revision by the

petitioner this court as said above directed the Sessions Judge to record the further evidence. The learned Sessions Judge recorded the further evidence and came to the above conclusion.

#. Therefore, before the remand of the matter vide order passed in Criminal Revision Application No.1166/1991 the learned Judicial Magistrate examined Mr.Valimohammad Umar - Principal of Daulat Anant Valiya New High School, Bhavnagar and Dr. Dhirajlal Girdharlal Adheda to whom the petitioner was sent for ossification test. On direction by this Court in Criminal Revision Application No.1166/1991 the learned Sessions Judge recorded the evidence of Dhanjibhai Bhavanbhai Makwana the father of the petitioner and the petitioner himself. The learned sessions Judge, further recalled Valimohammad Umar Principal of Daulat Anant Valiya New High School.

#. Thus, the learned Sessions Judge had two sets of evidence to come to the conclusion one, medical evidence i.e. the ossification test and second, the oral and documentary evidence.

##. So far as the medical evidence of Dr.Dhirajlal Girdharlal Adheda is concerned the same is not useful in arriving at the conclusion because in ascertaining whether the petitioner was Juvenile at the time of commission of the offence some exactness is necessary. As per the medical opinion, as on the date of examination which is sometime after commission of offence, the petitioner was between 16 to 17 years. Now, according to the above decision of the Hon'ble Supreme court the margin or error may be 2 years either side, meaning thereby the petitioner may be 14 years to 18 years i.e. 2 years lesser to 16 years and 2 years more than 16 years on the date of commission of offence. Therefore, this medical evidence lead to nowhere while some exactness in ascertaining the age is required to come to the conclusion.

##. The argument of Mr.Gandhi that the School Leaving Certificate cannot be relied upon is not acceptable. The School Leaving Certificates are public documents, the register being maintained for the purpose of details of the student at the time of admission is the public document. As per Clause (iii) of the Section 74 of the Indian Evidence Act, the Principal of a school maintains such register as an Executive Officer and, therefore, the entry is made in the School Register can be proved by producing certified copy of the same. In pursuance of Section 76 and 77 of the Indian Evidence Act the contents

therein can be proved by mere producing certified copies of such public documents. Therefore, the fact remains that the School Leaving Certificates at Ex.13, 14 and 15 are the documents proved by the prosecution being the public documents. The contents of the same are also proved meaning thereby that the date of birth of the petitioner which is mentioned in Ex.13 and 14 to be 1.2.1970 is proved by the prosecution. Now as against this there is no evidence on the side of the petitioner that wrong entries were made in the register and that the certificates do not pertain to the petitioner. Where the document is proved, heavy burden lies on the other side to disprove it. As against the documentary evidence at Ex.13 and 14 there is only oral say of the petitioner and his father that the petitioner was never admitted to any of these schools and that he had not studied in Daulat Anant Valiya New High School or any Municipal School. It was for the petitioner herein to prove by cogent and reliable evidence that the entries made in the School Leaving Certificate were not correct and that the certificate do not pertain to the petitioner. However, there is no iota of such evidence on behalf of the petitioner to disprove these two documents. There can be two students in a school of the same name there is also possibility that names of the father of the such two students may be the same but in any case it would not further go upto the name of the grandfather and the name of the student and their father and grandfather would be the same. What transpires from the record is that the father of the present petitioner has signed behind Ex.13 and 14 in token of receiving the School Leaving Certificate of the son i.e. the petitioner where the name is written Makwana Dhanjibhai Bhavanbhai. First, this denotes that these two documents Ex.13 and 14 pertain to the petitioner and petitioner only because the same is part and parcel of the public document and the prosecution has proved the same. However, the petitioner is not able to even show that the signature behind these two documents are not of the father of the petitioner, secondly, it is clear that there may be two students named as Rameshbhai Dhanjibhai but there cannot be two students named as Rameshbhai Dhanjibhai Bhavanbhai. Therefore, the arguments on behalf of the petitioner that this two documents do not pertain to the petitioner is substance less. The learned Sessions Judge has also considered that both Schools to which these two certificates pertain to are situated in Bhavanpura and family of the petitioner also residing in Bhavanpura. Therefore, in all possibility the petitioner must have studied in the School of Mahanagar Palika Bhavnagar and thereafter in Daulat Anant Valiya New High School. The

learned Sessions Judge, therefore did not commit any error on relying on these two documents in coming to the conclusion that the petitioner was not juvenile at the time of the commission of the offence. The learned Additional Sessions Judge did not commit any error in not placing reliance on medical evidence. I do not find any reason to interfere with the order which is impugned.

##. In view of the above, this Revision Application must fail and is dismissed accordingly. Interim relief granted by this Court on 28.5.1992 is vacated. Rule is discharged.

(J. R. VORA, J.)

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